

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARCIA R. STERNS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 12-cv-1077-MMA (MDD)

**ORDER GRANTING
DEFENDANT'S UNOPPOSED
MOTION TO DISMISS**

[Doc. No. 7]

On May 1, 2012, Plaintiff Marcia R. Sterns, proceeding *pro se*, brought this civil rights action against Defendant United States of America. [*Compl.*, Doc. No. 1.] In her complaint, Plaintiff requests the return of a computer and other unidentified property which were seized from her residence by government agents on January 12, 2011. [*Id.*] Defendant moves to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and other grounds. [Doc. No. 7.] Plaintiff did not file an opposition. For the following reasons, the Court **GRANTS** Defendant's unopposed motion, and **DISMISSES** Plaintiff's complaint without prejudice.

DISCUSSION

This action arises out of the seizure of a computer and other property from Plaintiff's residence. The property in question was forfeited in connection with a criminal case involving Plaintiff's son, Jordan Ben Sterns. [*See* Case No. 11-cr-4789-BTM.] Mr. Sterns admitted to being the "sole owner" of the computer seized from Plaintiff's home, and that "no other person or entity

1 has any right or claim” to it. [*Id.*, *Plea Agreement*, Doc. No. 21.] In the present action, however,
 2 Plaintiff claims ownership of the computer.

3 On July 12, 2012, Defendant United States moved to dismiss Plaintiff’s complaint on the
 4 grounds that, (1) the Court lacks jurisdiction because the United States is immune from suit, and
 5 (2) Plaintiff’s recourse is to assert an ancillary claim in Mr. Sterns’ pending criminal action, not
 6 raise an independent civil action. [Doc. No. 7.] The motion hearing was set for September 17,
 7 2012. Under Civil Local Rule 7.1.e.2, Plaintiff’s opposition to the motion was due on or before
 8 August 31, 2012. None was filed. On September 11, 2012, the Court took the matter under
 9 submission pursuant to Civil Local Rule 7.1.d.1. Subsequently, Plaintiff filed a “Motion to Set
 10 Hearing Date for Amended Complaint,” stating she could respond to the “contentions of the
 11 United States.” [Doc. No. 10.] The Court construed Plaintiff’s “Motion” as an *ex parte* request
 12 for an extension of time to file an opposition to Defendant’s motion to dismiss, and granted
 13 Plaintiff until October 12, 2012 to file an opposition. [Doc. No. 11.] To date, Plaintiff has not
 14 filed an opposition.

15 A district court may properly grant an unopposed motion to dismiss pursuant to a local rule
 16 where the local rule permits, but does not require, the granting of a motion for failure to respond.
 17 *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1 provides: “If an
 18 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1(e)(2), that
 19 failure may constitute a consent to the granting of a motion or other request for ruling by the
 20 court.” S.D. Cal. Civ. L. R. 7.1(f)(3)(a). “Although there is . . . a [public] policy favoring
 21 disposition on the merits, it is the responsibility of the moving party to move towards that
 22 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics.” *In re Eisen*, 31
 23 F.3d 1447, 1454 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to prosecute); *see*
 24 *also Dipp v. BAC Home Loans Servicing, LP*, 2012 U.S. Dist. LEXIS 75696 (S.D. Cal. May 31,
 25 2012) (Battaglia, J.) (dismissing action pursuant to local Rule 7.1 for plaintiff’s failure to respond
 26 to a motion to dismiss); *Yueh Chen v. PMC Bancorp*, No. 09-CV-2405-WQH-BLM, 2010 U.S.
 27 Dist. LEXIS 75468 (S.D. Cal. July 23, 2010) (Hayes, J.) (same); *Steel v. City of San Diego*, No.
 28 09-CV-1743-MMA-WVG, 2009 U.S. Dist. LEXIS 103042 (S.D. Cal. Nov. 5, 2009) (Anello, J.)

1 (same). As such, the Court has the option of granting Defendant's motion on the basis of
2 Plaintiff's failure to respond, and it chooses to do so.

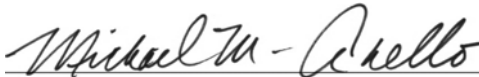
3 As of the date of this Order, Plaintiff has not opposed the motion, even after requesting and
4 being granted additional time to file an opposition. All told, Plaintiff has had approximately 15
5 weeks to prepare and file a response to Defendant's motion, and has failed to do so. The Court
6 concludes that "the public's interest in expeditious resolution of litigation," "the court's need to
7 manage its docket," and "the risk of prejudice to the defendant" weigh in favor of granting
8 Defendant's motion to dismiss, for failure to file an opposition. *Ghazali*, 46 F.3d at 53; *see also*
9 *Dipp*, 2012 U.S. Dist. LEXIS 756696, *3-5.

10 **CONCLUSION**

11 Based on the foregoing, the Court **GRANTS** Defendant's motion and **DISMISSES**
12 Plaintiff's complaint without prejudice. The Clerk of Court is instructed to terminate the case.

13 **IT IS SO ORDERED.**

14 Dated: October 24, 2012

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16 Hon. Michael M. Anello
17 United States District Judge
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